Harmony Corporation *and* International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths-Forgers and Helpers, AFL–CIO. Cases 15–CA–10537, 15–CA–10537–2, 15–CA–10557, and 15–CA–10571

January 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On March 14, 1989, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

1. The Respondent contends that the 8(a)(1) allegations of unlawful interrogations and threats are barred by Section 10(b) of the Act[2] because no charges of independent 8(a)(1) violations were filed by the Boilermakers, and the alleged 8(a)(1) violations do not have a significant factual relationship to the filed charges. We find merit in this argument with respect to the allegations of interrogation but not to those concerning the threats.

The only charges filed in this case alleged certain discriminatory acts in violation of Section 8(a)(3) and (1), and those charges were filed in March and April 1988.[3] Both the alleged interrogations and the alleged threats occurred within the 6 months prior to the filing of those charges, so they are not barred by Section 10(b) if they are encompassed within the discrimination charges.

At the time the complaint was issued in this case, Board precedent allowed the issuance of complaint allegations of independent violations of Section 8(a)(1) simply on the basis of boilerplate ''other acts'' language preprinted on the charge form. Thus, the threat and interrogation allegations here could be linked to the discrimination charges simply on the basis of that charge form language. In *Nickles Bakery of Indiana*, 296 NLRB 927 (1989), however, the Board overruled that precedent and held that 8(a)(1) allegations must meet the same ''closely related'' test that applies to all other categories of violations. In short, the complaint allegation must be ''factually related to the allegation in the underlying charge.'' Id. at 928. See also *Redd-I, Inc.*, 290 NLRB 1115 (1988) (setting out ''closely related'' test).

The Respondent asserts that there is no relationship at all between the interrogations, which took place on or about January 28, 1988,[4] when its supervisors asked crewmembers whether they were union members, and if so, of what union (and recording the answer), and the charges alleging discrimination relating to the Boilermakers' campaign, which did not begin until March 7, 5 or 6 weeks later. The evidence shows that the Respondent was one of five subcontractors employing workers at an Exxon oil refinery in Louisiana. In late January, Pipefitters Local 198 erected an area standards picket line at the refinery gate used by the Respondent and the four other subcontractors. Allegedly to determine who would honor the picket line, the Respondent interrogated its employees as described above.

We find that the there is no factual nexus between the interrogations and the underlying charges and thus they are not ''closely related.'' The interrogations can not be connected to the Boilermakers' organizing campaign, out of which the charges arose. That campaign had not yet begun; and there is no basis for finding that the interrogations were conducted in anticipation of that campaign. That the interrogations were directed at the employees' union sympathies and may have been for a purpose other than the one the Respondent claims, including a desire to remain nonunion, does not bridge the gap existing between the complaint allegations of interrogation and the alleged acts of discrimination that constitute the subject matter of the charges, so as to make them all ''closely related.'' Consequently, the interrogation allegations contained in the complaint are beyond the scope of the charges, and must be dismissed as barred by Section 10(b) of the Act.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that Bowles, an employee who was involved in the final set of circumstances that contributed to Fontenot's unlawful discharge, wore union insignia on his hardhat. This finding is not supported by the record. We rely on the credited testimony of Fontenot that when Fontenot inserted himself into the elevator incident involving Bowles and Supervisor Safety Inspector Gonzales, Fontenot knew Bowles to be a fellow union organizer. In any event, Bowles' union activity is not in issue.

We note that the Respondent filed its answer to the complaint on September 29, 1988, not September 16, as inadvertently stated by the judge.

[2] Sec. 10(b) provides, inter alia, that the Board's power to issue a complaint depends on the filing of an unfair labor practice charge and that no complaint shall issue based on any unfair labor practice occurring more than 6 months prior to the filing of the charge with the Board.

[3] The charges were dismissed by the Regional Director, but the General Counsel reversed the Regional Director with respect to the Fontenot charge allegations and directed the Regional Director to issue complaint on those allegations, as well as on the allegations of interrogations and threats for which no specific charges had been filed. The complaint issued on September 16, 1988.

[4] All dates are in 1988 unless otherwise noted.

On the other hand, we find that the 8(a)(1) allegations of unlawful threats and warnings are not barred by Section 10(b). The complaint alleges that the Respondent threatened, inter alia, to discharge and not to rehire employees who signed authorization cards for the Boilermakers. It also alleges, in effect, that the Respondent warned employees that, because of their union activities on behalf of the Boilermakers, it was looking for safety infractions that could be used against them. The alleged threats were made in the course of the speech that the Respondent's vice president, Gauthreaux, gave to 5 different groups of employees on March 9, the day after the Respondent received a telegram from the Boilermakers announcing its organizational campaign and listing the names of about 50 workers who were on the organizing committee. Included on that list is Fontenot, whose subsequent written reprimand and discharge are the subject of the 8(a)(3) allegations in both charge and complaint. The warnings were directed at employees Nunnery and Fontenot by Supervisors Sutton and Harrington; and in the case of Fontenot, later that same day he received the aforementioned reprimand and the next day he was discharged, in both instances for asserted safety violations.[5] Thus, unlike the interrogations, the threats and warnings arose from the same sequence of events as the pending timely charges, albeit they involved different sections of the Act.[6] Accordingly, the ''closely related'' test of *Redd-I* and *Nickles Bakery*, supra, has clearly been met, and these 8(a)(1) allegations are properly before us for determination on the merits.

2. In affirming the judge's finding that Gauthreaux's speeches violated Section 8(a)(1), we do not rely, as did the judge, on Gauthreaux's prepared text. Rather, we rely on the actual speech he gave to the employees. The credited testimony of employees who heard the speeches establishes that Gauthreaux departed from his written text. Thus employee James Bueche, who made notes as he listened to the speech, testified that according to his notes, Gauthreaux stated that the Respondent was ''not going to sign any agreements with anyone, any union.'' Both Fontenot and Nunnery credibly testified that Gauthreaux said the employees' jobs could be ''in jeopardy'' if they signed union cards. We find, that these statements were unlawful threats in violation of Section 8(a)(1).

We also affirm the judge's finding that the warnings given by Supervisors Sutton and Harrington to Fontenot and Nunnery violated Section 8(a)(1). In doing so, we reject the Respondent's contention that in assessing the coerciveness of these supervisory warnings, the doctrine enunciated in *Paintsville Hospital Co*., 278 NLRB 724 (1986), is controlling.[7] We find, instead, that the circumstances here are more similar to those found to be coercive in *Central Broadcast Co*., 280 NLRB 501 (1986). In both cases, the allegedly unlawful questions or statements were by persons who could be characterized as friendly supervisors whose prounion sentiments were well-known to the employers. In *Paintsville*, however, the supervisors openly supported the union and not the employer, and the Board concluded that they would have appeared to be acting not in behalf of management, but ''in their own interest and in accordance with their own [prounion] sympathies, which were plainly contrary to those of management.'' Id. at 725. It accordingly found that the employer was not responsible for the supervisors' conduct and there was therefore no violation of Section 8(a)(1). The Board did not, however, overrule earlier ''friendly supervisor'' cases. It expressly distinguished them as lacking similarly ''extensive evidence'' of prounion sympathies and activities on the part of the supervisors. Id. at 725 fn. 9.

In *Central Broadcast*, supra, the supervisor (MacKinnon) was not an open campaigner for the union, but he was sympathetic to the unionizing employees. 280 NLRB at 502–503. On at least two occasions he interrogated a union activist (Peters) about the union's plans and he communicated to Peters' plans that the employer had developed to avoid unionization by dismissing part of the unit. Id. The Board found the interrogations coercive because they occurred in the context of discussions of the employer's unfair labor practices. Id. at 503.

In the present case, the record does not show that Supervisors Sutton and Harrington openly supported or approved the Boilermakers' campaign, that they were trying to protect that campaign, or that they were acting in their own interests in giving the warnings. Even granting that, as the judge found, the warnings were ''designed to be helpful'' to Fontenot and Nunnery,

[5] We agree with the judge, for the reasons stated by him, that the asserted safety violations were used as pretexts to reprimand and discharge Fontenot for his union activity. In the case of the reprimand, we rely in particular on the fact that the supervisor who allegedly photographed and observed Fontenot in a safety violation of not using his safety belt while working high above ground, never instructed Fontenot to ''tie-on'' at any time during the 20–25 minutes he so observed him. That failure belies that safety was the concern that the Respondent claims in the case of Fontenot. Consequently, even if Fontenot was in breach of safety measures we find that the breach was not the real cause of his discharge. The case for finding that Fontenot was unlawfully discharged the next day is even more compelling. The credited testimony establishes that Fontenot was attempting to prevent an altercation between Bowles and Gonzales (see fn. 1, supra) and that it was for that conduct that he was cited and discharged under the rubric of a ''safety infraction.'' In these circumstances, the Respondent's claim that Fontenot's conduct in intervening in the Bowles-Gonzales incident constituted a safety infraction is without merit and hence the Respondent has presented no legitimate basis for discharging him. See *Trover Clinic*, 280 NLRB 6 fn. 6 (1986). See also *Limestone Apparel Corp*., 255 NLRB 722 (1981).

[6] See *Nickles Bakery*, supra at fn. 5 (noting that ''closely related'' test does not require that same sections of the Act be involved) and fn. 7 (citing cases finding adequate nexus between charged and uncharged unfair labor practices where all are committed by employer as part of a single unlawful campaign against a particular union).

[7] Member Cracraft agrees that the facts in this case are distinguishable from those in *Paintsville*. Accordingly, she does not pass on the Board's finding in *Paintsville.*

they would reasonably appear to be in keeping with the Respondent's policy of intimidating employees to discourage them from engaging in union activity.

Thus, it was shortly after Vice President Gauthreaux's publicly announced threat of job loss for union activity that Sutton and Harrington warned Fontenot and Nunnery that their employer would use safety violations as pretexts to discharge them. Virtually contemporaneous with that warning, Fontenot was unlawfully reprimanded and discharged on the pretext of safety violations. In such circumstances it is immaterial that those warnings have been made out of friendly concern or in sympathy with the employees' union desires. They were issued in the context of the Respondent's other unfair labor practices and were clearly coercive. *Central Broadcast Co*., supra.

AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraph 4 of the judge's conclusions of law:

''4. By the acts and conduct set forth above in Conclusion of Law 3; by threatening not to sign a contract with any union and to discharge employees if they sign union cards; and by telling employees that the Respondent was looking for pretexts to discipline and discharge them, the Respondent herein violated Section 8(a)(1) of the Act.''

AMENDED REMEDY

In fashioning a remedy for Fontenot's discharge, the judge orders his reinstatement even if the job at the Exxon refinery has been completed. In that event, the judge requires the Respondent to offer Fontenot employment at another of its jobsites in the Baton Rouge, Louisiana area. The judge also provides for backpay on an open-ended basis.[8]

The Respondent, in excepting to these remedial provisions, contends, inter alia, that resolution of its reinstatement and backpay obligations toward Fontenot is best left to the compliance process. It asserts that Fontenot was hired on a temporary basis, i.e., just for the ''turnaround job'' at the Exxon refinery, which has been completed; that irrespective of his discharge on March 26, Fontenot would have been terminated on April 10 when the work that he was hired for was essentially finished.

On the state of this record, we are unable to determine the merit of the Respondent's assertions. However, while for the present we shall not disturb the judge's recommended remedy, we shall permit the issues concerning Fontenot's reinstatement and backpay to be fully litigated and resolved at the compliance stage of the proceeding. See *Dean General Contractors*, 285 NLRB 573 (1987).

[8] We shall compute interest on any backpay owing Fontenot in accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), rather than *Olympic Medical Corp*., 250 NLRB 146 (1980), cited by the judge.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Harmony Corporation, Baton Rouge, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete original paragraph 1(a), substitute the following for former paragraph 1(b), now 1(a), and reletter the remaining paragraphs.

''(a) Threatening not to sign a contract with any union and to discharge employees if they sign union cards.''

2. Substitute the following for new paragraph 1(d):[9]

''(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.''

3. Substitute the attached notice for that of the administrative law judge.

[9] We have substituted the Board's standard cease-and-desist language because there is no evidence in the record that the Respondent has engaged in widespread or egregious conduct.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten not to sign a contract with any union and to discharge our employees if they sign union cards.

WE WILL NOT tell our employees that we are looking for pretexts to discipline and discharge them.

WE WILL NOT discourage membership in or activities on behalf of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths-Forgers and Helpers, AFL–CIO, by placing written reprimands in personnel files of our employees or by discharging them or otherwise discriminating against them in their hire or tenure.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer to Dawson C. Fontenot full and immediate reinstatement to his former job or, if that job no longer exist, to a substantially equivalent position, without prejudice to his seniority or to any other rights he previously enjoyed, and WE WILL make him whole

for any loss of pay or benefits which he may have suffered by reason of the discrimination found in this case, with interest.

WE WILL remove from our personnel records the disciplinary warning and termination notice given to Dawson C. Fontenot in March 1988, and notify Dawson C. Fontenot in writing of this action.

HARMONY CORPORATION

Charlotte H. White, Esq. and *Denise D. Frederick, Esq*., for the General Counsel.
William R. D'Armond, Esq. and *Steve C. Thompson, Esq*., of Baton Rouge, Louisiana, for the Respondent.
W. T. Creeden, General Organizer, of Baton Rouge, Louisiana, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me at Baton Rouge, Louisiana, on a consolidated unfair labor practice complaint,[1] issued by the Regional Director for Region 15 and amended at the hearing, which alleges that Respondent, Harmony Corporation,[2] violated Section 8(a)(1) and (3) of the Act. More particularly, the consolidated complaint alleges that the Respondent threatened employees with discharge if they signed union cards, threatened not to rehire employees if they signed union cards,[3] announced that it was not going to hire any more union adherents and would be changing its hiring procedures in order to screen out union adherents, announced that it would not rehire employees if they signed union cards, told employees that the Respondent was looking for pretexts to fire union members, interrogated employees concerning union activities, issued an employee a written warning because of his union activities, and discharged Dawson C. Fontenot because of his union activities. The Respondent denies these allegations and asserts that Fontenot was discharged because of safety violations on his part. On these contentions the issues here were framed.[4]

[1] The principal docket entries in this case are as follows: Charge filed against the Respondent by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths-Forgers and Helpers, AFL–CIO (the Union), in Case 15–CA–10537, on March 25, 1988, and in Case 15–CA–10537–2, on April 12, 1988; charge filed by the Union against Respondent in Case 15–CA–10557 on April 21, 1988; charge filed by the Union against Respondent in Case 15–CA–10571 on April 21, 1988; consolidated complaint issued by the Regional Director for Region 15, against the Respondent on September 16, 1988; Respondent's answer filed September 16, 1988; Respondent's amended answer filed on December 14, 1988; hearing held in Baton Rouge, Louisiana, on December 19 and 20, 1988; briefs filed with me by the General Counsel and the Respondent on or before February 10, 1989.

[2] Respondent admits, and I find, that it is a Louisiana corporation and an industrial contractor engaged in maintenance work at the Exxon refinery in Baton Rouge, Louisiana, and at other refineries. During the 12 months preceding the issuance of the consolidated complaint, the Respondent purchased and received at the Baton Rouge, Louisiana jobsite of the Exxon Corporation directly from points outside the State of Louisiana goods and materials valued in excess of $50,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

[3] The General Counsel moved to withdraw pars. 7(b)(1) and (2) of the complaint. The request is granted.

[4] Errors in the transcript have been noted and corrected.

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES ALLEGED

Since 1975, the Respondent has been a large industrial contractor located in Baton Rouge, Louisiana. It specializes both in ongoing maintenance work at oil refineries and in performing large-scale overhauling at refineries. Respondent also performs other aspects of industrial construction and has contracts outside the Baton Rouge area as well as in that locality. It has always operated on an open shop or nonunion basis.

For some time the Respondent has performed a maintenance contract at the Exxon refinery at Baton Rouge and employs about 100 men on an ongoing basis to fulfill that contract. From time to time it has also acquired short-term ''turnaround'' contracts for Exxon, in which it performs detailed repairs and overhauling of large cracking towers which are temporarily shut down for this purpose. In the spring of 1988, Respondent performed repairs on the PHLA No. 1, or power former, and the PCLA No. 2, or catcracker. These jobs were scheduled to last an estimated 10 weeks. At peak Respondent employed about 500 craftsmen on the two projects, in addition to its regular maintenance crew. While the work was in progress, employees worked 10 hours a day, 6 days a week. At the end of the project, most were laid off although some may have been transferred to other jobsites, since the Respondent follows a practice of transferring construction employees from job to job whenever its employment situation permits. Hiring for the Exxon job began in January. Work started to decline in April and May.

In late January 1988, Pipefitters Local 198 erected a picket line at the south gate of the refinery. This is the gate which was used by contractors and their employees. The picketing was directed at the Respondent and at four other contractors whom Exxon was using on the turnaround projects, accusing them of paying substandard wages on this project. On January 28, Respondent instructed its foreman to ask each employee, most of who were employed in the boilermaker craft, whether they were members of any labor organization. Mike Forbes, the jobsite planner, told Foreman Charles Greaud that the timekeeper had told him that the Company needed to know who was in the Union and who was not, so Greaud went around asking each of his crewmembers if they were paid up union members and which local they belonged to. He noted their responses on their timecards and turned the cards into Forbes. Other foremen also asked their crew members the same questions, noted their responses, and turned in the information to the Company. They also asked employees what, if any local they belonged to and recorded those responses as well. About 40 percent of the Respondent's employees indicated that they were members of Boilermakers union, though not necessarily of the Baton Rouge Local. Respondent admits that this questioning took place but states that it needed the information to determine whether or not its employees would observe the pipefitters picket line and thus require it to seek replacements to man the job.[5]

[5] Specific incidents of interrogation designed to carry out the company plan were attributed to other named supervisors. Safety man Rock Routen, asked employees James K. Bueche and Lee Malbreaugh if they were union or nonunion. When both replied that they were union, he then asked, ''What Local?'' and they replied, ''582.'' He wrote their replies on a sheet of paper fixed to

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Discriminatee Dawson C. Fontenot was hired by the Respondent at the refinery job on February 2 as a welder. He was laid off for a few days early in February and then rehired. Early in March the Boilermakers began an organizing drive among the Respondent's employees at the Exxon refinery. On March 7, it dispatched a telegram to the company president and the project manager, informing both of them of this effort and listing the names of 45 employees who were members of the organization committee. Fontenot's name was on this list.

On March 9, Felix ''Phil'' Gauthreaux, Respondent's vice president in charge of maintenance operations, came to the jobsite and addressed all of the Respondent's employees in a large tent which the Respondent was using as a lunchroom. Because of the size of the work complement, Gauthreaux delivered his speech five different times. While he attempted to adhere a prepared text, conditions made it difficult for him to do so, since he was holding a megaphone in one hand and the speech in the other. He was often interrupted by catcalls and an assortment of rude or profane remarks.

Employee James K. Beuche testified credibly that Gauthreaux said, during the speech which he heard, that the Company was open shop and prosperous and was not going to sign a contract with anyone. Gauthreaux was reported as saying that he knew union cards were being distributed and warned employees to be sure that they knew what they were signing before they signed anything. Fontenot's credited testimony concerning the meeting he attended is in a similar vein. According to Fontenot, Gauthreaux stated that Harmony was the sister company of another unionized construction company which had suffered a huge loss in work. He also told employees to think long and hard about signing union cards because their jobs could be in jeopardy adding that Harmony was nonunion and was going to stay nonunion. Employee Gary Nunnery testified credibly that, at the meeting he attended, Gauthreaux said pretty much the same things that Beuche and Fontenot had reported—the Company had been in business for 12 years, it never would become a union company, it did not want anything to do with the Union, that Nichols Construction Company, its sister company, suffered a drastic decline in business due to the Union, and that employees should be careful about signing cards because they might be placing their jobs in jeopardy.

The text of the speech which Gauthreaux used as an outline is in the record. Included in the text of the speech are the following messages:

> Harmony is a nonunion, open-shop company. We have always been open shop, and we intend to stay that way. . . . It is not a matter of just personal preference. It is the very serious matter of protecting the security of our business and the security of jobs— your job and mine.
>
> Our company, Harmony, has a sister company, Nichols Construction. It was one of the biggest construction companies in the South. It had thousands of employees. It also had unions. At one time over 2,500 union members had jobs at Nichols. Today there are only 200. . . . Nichols found itself helpless to compete because of high-cost, restrictive work practices imposed by the union. It could not obtain work because it could not bid competitively.
>
> Nichols was a big pipe fabricator as well as a major contractor. Repeatedly it could not deliver on time because of labor disputes and union strikes. . . . Nichols lost its pipe business and its construction business. Today, it is reduced almost completely to renting equipment. Over 90 percent of their unionized work force lost their jobs. . . . Our customers use our services because we guarantee high quality, at competitive prices, and we deliver on time, without interruption. If we can't guarantee those things, we won't be in business long. So your job and mine depend on that, and we are determined to keep the danger of union strikes or other trouble out of here.
>
> Our advice is: Don't sign a union card or anything else for a union, no matter who tries to talk you into it. Your signature can bind you—it can cost you plenty.

During the lunchbreak on the same day, Fontenot stood up in the lunchroom and delivered a rebuttal speech before about 100–125 employees including several supervisors. After getting their attention, Fontenot told them not to believe Phil Gauthreaux because he was trying to intimidate everyone. Fontenot accused Gauthreaux of making several illegal statements and commented further that it was funny that employees had never seen him at the jobsite until the union organizing drive began. He then told employees that if any of them felt intimidated, they should see him and he would see if anything could be done about it.

Various members of the organizing committee began to solicit signatures on authorization cards at the jobsite. They wore distinctive ''Boilermaker'' badges on their clothing and gummed labels which were affixed to hardhats. Fontenot was among those who participated in these activities. Respondent's supervisors acknowledge that Fontenot was among the leaders of the organizing drive. He also attracted the attention of Exxon's supervisors who were overseeing the work of the contractors on the turnarounds.

The employees of contractors were required to park in a designated lot about a mile or so from the turnarounds. Respondent and other contractors used schoolbuses to transport their employees from the parking lot to the actual jobsites. It had been the practice of the Respondent to permit day-shift employees to quit work at 4:50 p.m., clean up, climb aboard buses at 4:55 p.m., and arrive at the parking lot at 5 p.m. The trip was on company time. On or about March 22, William Storm, Respondent's day-shift superintendent on the PCLA-2 turnaround, held a safety meeting at which he told employees that their productivity was down so the Company would be changing bus schedules. From that point forward, employees would be expected to work until 5 p.m. and buses would not leave for the parking lot until 5:10 p.m. On the following day Fontenot and fellow union activist Nunnery saw Storm and Project Manager Bobby Wilson parked along the road in a pickup. He asked if employees could have better working conditions and a contract. Both supervisors just laughed and said that there was nothing they could do about it. Fontenot then complained about the change in bus sched-

a clipboard. Routen did not tell either employee why he wanted the information. Foreman Richard Sutter asked Nunnery if he was a union member and asked other employees the same question within Nunnery's hearing. Sutter wrote down the replies on a sheet of paper he was carrying around. He did not explain the reason for his inquiry.

ules. Storm replied that this was Exxon's policy. Fontenot then observed that it was peculiar that, whenever there was a change in working conditions, the contractor always blamed the customer. He went on to ask the two supervisors whether they sat around in their trucks at the end of the day after they knocked off work. Both replied that they did not, and to their reply, Fontenot simply asked why the Company expected employees to do so. They had no reply.

The following day, at another safety meeting, Fontenot asked Storm in the presence of a large number of employees whether it would be possible to return the bus schedules to previous times. Storm said that it would not be possible. During the same meeting, Fontenot also spoke up and asked Storm if it would be possible to visit the control room and inspect the list of hazardous substances on the jobsite which had to be maintained at that location. Storm told Fontenot that he would speak to him later on this point.

After the meeting Fontenot repeated his request to Storm in the presence of Nunnery and several other employees. He noted that a sulphur spill had occurred a couple of days before and it had also come to his attention that people were walking around the jobsite with asbestosis. He added that, since the bus schedules had been changed, he was going to walk from the jobsite to the parking lot and he wanted to know what kind of chemical hazards he might encounter if he did so. Storm told Fontenot that there would be no problem in letting him see the hazardous substance list and contacted the Exxon coordinator to arrange for the inspection. The Exxon coordinator picked up Fontenot and Nunnery and took them to the control room. Once inside the control room, Fontenot asked permission from an Exxon supervisor, J. B. Cline, to see the list. Cline said he was not sure if they had the legal right to be in the control room and told them that he was going to contact Exxon's attorneys to check out the matter. Shortly thereafter, Respondent's supervisor Richard Sutton and Exxon Coordinator Richard Reed arrived. They became upset. They told Nunnery and Fontenot that they had not gone through proper channels to get permission to visit the control room. Fontenot told Sutton that Storm had okayed the visit and informed Reed that his superior, Cline, had also approved. Reed then told Nunnery and Fontenot that they had better ''cover their asses.'' Management was going to come after them now because they wanted them ''real bad.''[6]

On another occasion at about this same point in time, Foreman Leron Harrington told Nunnery that he had better ''cover his ass'' because they wanted to fire Nunnery for a safety violation. Nunnery replied that this was obvious because they had people hiding on the catcracker and had safety people bird dogging them everywhere. Two or three days later Sutton repeated the same warning to Nunnery.

On Friday, March 25, before the beginning of the morning shift, Sutton, who was Fontenot's immediate supervisor, warned Fontenot to watch himself because ''they were coming after you on a safety violation.'' He added that he was assigning Fontenot to a job requiring a safety belt. On certain types of scaffoldings, employees are required to wear a safety belt. It is a harness or halter attached to a lanyard, a rope with a clasp at the end which is supposed to be tied to a wire or beam while the employee is working in order to keep the employee from falling to the ground. Fontenot was wearing a safety belt as he went to work. One of the major issues in this case involved whether or not it was ''tied off'' while he was working, i.e., attached to a wire or beam which is part of the permanent structure.

It is undisputed that the standard practice of the Respondent, at least on the jobsite, was to assign employees to work in groups of two or more. The reason underlying this practice was to make another employee immediately available to assist his partner in the event of a mishap. On the morning in question, Fontenot was assigned to work alone on a scaffolding in the middle of the 6th floor of a 20th-floor story cracking tower. Normally he worked with Nunnery. However, on this occasion, after Nunnery had been working on the catcracker for about 20 minutes, his foreman, Harrington, instructed him to get a truck, ride out to a nearby field, and wait for a cherry picker to pick him up. Nunnery did so and spent the whole morning waiting in the field for the cherry picker. He simply sat in the truck alone without performing any work. This was the only occasion on which something like this had occurred during Nunnery's working experience with the Respondent.

Exxon employs a relief supervisor named Anthony Hargroder who, in the spring of 1988, was assigned to photograph the progress of the turnaround repairs. The purpose of the assignment was to provide Exxon's jobsite supervisors with an album of their activities which might be exhibited to upper management who visit the refinery from time to time. On the morning of Friday, March 25, Richard Reed, the Exxon coordinator who was responsible for the Respondent's crew on which Fontenot was working, asked Hargroder to position himself on the catcracker in the vicinity of Fontenot's work station and to watch Fontenot to see if the latter was starting to work without tying off the lanyard on his safety belt. Hargroder told Reed he would stay with Fontenot as long as he could before he had to go to other parts of the refinery to continue his regular assignment of photographing turnaround repair activities. Hargroder observed Fontenot for about 20 or 25 minutes. For the first 15 minutes or so of his observation, Hargroder stayed on the eighth floor of the cracking tower, two floors above Fontenot's work station but within sight of where Fontenot was working. He then moved to the sixth floor, within 30 feet from where Fontenot was welding. He photographed Fontenot from both locations.[7] After snapping Fontenot in a position of working without a safety lanyard tied to a safety line or I-beam. Hargroder left the area and radioed Reed. They met in the office of Darrell Clark, Exxon's principal coordinator of the Harmony operation. Hargroder told Reed and Clark that he had pictures of Fontenot without his safety harness hooked up and said that he would have the pictures

[6] Reed was one of several employees in the Exxon or Harmony management who made significant and damaging remarks or played significant roles in the unfolding of this litigation but who were not summoned to testify. Others include Storm, Sutton, Wilson, Kimble, Harrington, and Routen. Since the remarks attributed to these individuals stand undenied in the record, I conclude that they were made as reported by General Counsel's witnesses.

[7] The pictures which Hargroder took on this occasion were introduced into evidence. Since the individual depicted in the photos was wearing a welder's mask, it is impossible to identify the subject of the pictures from the photos themselves. However, I accept Hargroder's testimony that it was Fontenot whom he was photographing and conclude that the pictures in evidence are those of Fontenot. Fontenot acknowledged that the individual portrayed in the photos did not have his safety belt attached to a beam but had it thrown over his shoulder.

developed by early afternoon. He did so and turned the pictures over to Clark after they were returned form the photo developing company.

When the pictures arrived, Clark showed them to Harmony Project Manager Wilson but kept the pictures.[8] Clark spoke with Storm and told Storm to handle this problem. He did not tell Storm to discharge Fontenot. According to Fontenot's uncontradicted testimony, Storm told him at lunchtime that the Company was going to have to give him a written reprimand because Exxon had taken a picture of him working without having his safety belt tied off. Fontenot said that he did not believe it and insisted that his safety belt had been tied off. Fontenot demanded to know why some one had not come up to him to warn him on the spot that his safety belt was not tied off if, in fact, such was the case. Storm replied that no one had done so because, by the time that anyone had gotten near him, his belt had been tied on. Fontenot asked to see the pictures but Storm refused. He asked Storm if he was going to take an Exxon man's word against that of one of Harmony's own employees. Storm replied that he was and told Fontenot to come to his office after lunch to pick up the written reprimand. The warning read: ''On the morning of 3/25/88, Fontenot was observed not having his safety belt tied off in a work area requiring the same.'' At the bottom of the sheet is a space for the employee's comment. In that section, Fontenot wrote: ''To the best of my knowledge I was wearing my safety belt, and it was hooked up. I had been warned by my foreman and supervisor that Harmony and Exxon was keeping a close eye on me to try to catch me on some safety violations to terminate me. I feel it is because of my efforts to organize the job, that is the reason for this.'' Storm also told Fontenot that he would be discharged in the event of any further violations. After signing the document, Fontenot went back to work.

Early in the morning shift of Saturday, March 26, Fontenot was approached on the job by employee James Hancock, a union supporter, who complained that he had been intimidated by two safety supervisors. He told Fontenot that he was being hassled because he was wearing a union badge. The supervisors in question were J. C. Ashford, an Exxon safety man, and Mario Gonzales, the safety man for Sunbelt, another subcontractor on the turnaround job. According to Hancock, he was carrying his earplugs in his pocket and was berated by both safety inspectors for not wearing them. When Fontenot saw Ashford and Gonzales a few minutes later, he approached them and complained. He asked what was going on concerning Hancock, and told them that he had received a report that he was being intimidated because he was wearing a union badge. He asked their names. Gonzales became angry, told Fontenot his name, asked sarcastically if Fontenot knew how to spell it and whether he also wanted Gonzales' social security number. Ashford and Gonzales denied that they were harassing union supporters and claimed that they were just trying to correct safety violations when they observed them. Ashford then told Fontenot that he was going to write a reprimand concerning Hancock's violation. Ashford then asked Fontenot his name and Fontenot gave it.

A few minutes later, Fontenot was standing near the elevator and observed an incident involving Gary Bowles, an employee of UMC. UMC was another construction subcontractor at the Exxon refinery and Bowles was a member of the organizing committee that was trying to organize UMC. Bowles was trying to get on a crowded elevator and the operator tried to close the cage door and prevent him from doing so. I credit Fontenot's testimony that Gonzales arrived at the scene and grabbed Bowles by the arm to prevent Bowles from blocking the closing of the elevator door. Bowles became angry and Fontenot grabbed him to prevent him from hitting Gonzales. He told Bowles not to pay any attention to Gonzales because jobs like his were a dime a dozen. He did not urge or counsel Bowles to commit a safety violation or to disregard safety regulations. He was simply trying to stop a fight by preventing Bowles from hitting Gonzales. Gonzales became angry and radioed Ashford. He told Ashford that, if Bowles and Fontenot had been his employees (i.e., Sunbelt's employees), this incident would not have happened. I also credit Fontenot's denial that he had used any obscene language toward Gonzales. The incident was first reported to Exxon Coordinator Clark, who took up the matter with Storm. Storm called Phil Gauthreaux at Gauthreaux's house to discuss what ought to be done. Gauthreaux admits that this incident received special treatment because of Fontenot's position as a union organizer but claims that the special treatment was benign treatment and amounted to ''giving Fontenot the benefit of the doubt.'' Gauthreaux phoned his lawyer and then called Storm, telling Storm to handle the incident as if Fontenot were not a known union adherent. Storm discharged Fontenot, placing on his termination notice that the reason for the termination was ''safety violation.''

II. ANALYSIS AND CONCLUSIONS

A. *The Status of Certain Management Employees of Exxon and Other Contractors vis-a-vis the Respondent*

Respondent was one of about five contractors or subcontractors whom Exxon had engaged to repair cracking towers at its Baton Rouge refinery. Exxon closely supervised the job through coordinators such as Darrell Clark, who was the overall coordinator of the project, and Richard Reed, the Exxon coordinator whose special responsibility it was to see that OSHA, Exxon, and employer safety rules and regulations were observed. Gonzales had a similar responsibility for Sunbelt and Pat Fuller was one of two safety inspectors employed on the project by the Respondent.

Apparently Exxon was dissatisfied with the safety record of its contractors and subcontractors on this job and felt that additional steps needed to be taken in order to enforce existing rules and regulations. According to Respondent's safety inspector Fuller, the Respondent had only two men on the job to monitor the activities of 600 Harmony employees. He felt that this was an inadequate number. Late in March, at the instance of Exxon, both Exxon and its contractors and subcontractors formed a safety coalition. There is an indication in the record that the principal elements of this coalition were reduced to writing, although no document to this effect was introduced. According to their understandings, the basic

[8] The pictures themselves were never shown to Fontenot. In fact, they disappeared during the investigation of an unfair labor practice charge which the Union had unsuccessfully filed against Exxon and reappeared just days before the hearing in this case. Apparently the negatives from which the prints had been prepared also disappeared.

terms of which are undisputed, Exxon and all of the other employers on the job agreed that all safety inspectors and other supervisors of all employees would be responsible for overseeing the safety performance of all employees on the jobsite, regardless of employer. As Fuller put it, ''we would all collate [sic] ourselves and work together.'' All safety directors and other supervisors of every employer on the jobsite were mutually empowered to give orders to the employees of any other employer respecting any safety matters they might observe and to step in and stop a safety violation being committed by any employee on the job, regardless of whom his employer might be. On the morning of March 26, the same day on which Fontenot was discharged, the elements of this agreement were announced to Respondent's employees at a safety meeting, although the actual agreement had been concluded a few days earlier. Respondent's employees were told to obey the safety instructions of any safety inspector, regardless of whom the inspector might work for.

Having been invested by the Respondent with the power to direct Respondent's employees on the job and to issue verbal warnings for safety infractions, including infractions of rules and regulations imposed by employers other than the Respondent, the safety inspectors of all employers, including those who supervised inspectors, became supervisors of the Respondent in this case within the meaning of Section 2(11) of the Act. This number included Darrell Clark, Richard Reed, Mario Gonzales, J. C. Ashford, and Anthony Hargroder. Accordingly, the Respondent is responsible for the acts and statement of these individuals.

B. *Independent Violations of Section 8(a)(1) of the Act*

In January 1988, shortly after the pipefitters had established a picket line at the construction workers gate, the Respondent directed its foreman to survey all of the members of their respective crews and ask each crewmember if he was a union member. They were asked to find out to which local, if any, the union adherents belonged. I discredit Phil Gauthreaux's testimony to the effect that foremen were not directed to inquire as to union local membership. Foremen did ask this question and at least one noted on timecards specific locals, if any, to which his crewmembers belonged. One supervisor asked his crewmembers if they were paid-up union members. This was a systematic inquiry into union membership. There is no evidence that any employee was informed about the reason for the questioning or that any employee was given any assurance that his replies would not be held against him. Nor was the interrogation conducted by secret ballot. Thus, the methodology employed in this polling violated several basic requirements laid down by the Board in *Struksnes Construction Co*., 165 NLRB 1062 (1967). Moreover, the reason that polling was authorized, under stated safeguards, in *Struksnes*, was not present here, since the boilermakers had made no demand for recognition on this Respondent, and the Respondent had not been placed in any position where it had to respond to such a demand. Nor did the question posed to Respondent's employees relate to the preferred excuse advanced by the Respondent to defend action, namely, the need to know who among its employees were intending to go on strike so it could secure replacements. The questions asked were not directed to strike activity but to union membership, thus indicating a totally different concern, namely, that a majority of the Respondent's Exxon job employees might became unionized. Accordingly, by systematically interrogating its employees concerning their union membership and activities, the Respondent violated Section 8(a)(1) of the Act. The same finding pertains to specific instances of interrogations alleged in the consolidated complaint relating to Supervisors ''Rock'' Routen, Richard Sutton, and Charles Greaud.

On March 9, in response to a union telegram notifying the Respondent that it was organizing its employees at the Exxon refinery job, Respondent's vice president Felix ''Phil'' Gauthreaux visited the jobsite and, on five different occasions throughout that day, delivered the Company's reply. It was a free-swinging denunciation of trade unionism and an assertion of the Respondent's adamant determination to remain nonunion. The consolidated complaint alleges that Gauthreaux went beyond the bounds of fair comment in his speeches by threatening employees with discharge if they signed union cards and by threatening employees that they would not be rehired if they signed cards. In this case, the text of Gauthreaux's speech supplied by the Respondent presents a more convincing case of a violation than the recollections of employees who were in the audience.

According to Gauthreaux's written speech, Nichols, its sister company, went out of business (or almost out of business) because of unions, and union men lost their jobs in large numbers. Gauthreaux told his listeners that Harmony was nonunion, it does not intend to suffer the same fate as Nichols, and because of this resolve, it would stay nonunion at any cost. Employees' jobs, and those of management as well, depended on the Respondent's ability to ward off the Union which was trying to organize it. Toward that end, Gauthreaux told employees not to sign union cards, warning them that they would lose their jobs and there would be no jobs with Respondent in the future to which they could be hired. These statements were not predictions of consequences which might be brought on by impersonal market forces but were statements of the consequences which would necessarily follow from Respondent's own intention to operate as a nonunion company. Any lingering doubt as to Gauthreaux's meaning can be resolved by other statements made by his foreman which were even blunter and left even less room for argument. By making these remarks on March 9 to five different groups of employees, Gauthreaux was threatening them both with discharge if they signed up for the Union and with the Company's determination not to hire them thereafter on other jobs. Such threats constitute a violation of Section 8(a)(1) of the Act. In mid-March, Foreman J. C. Kimble told members of his crew during a lunchbreak that, if they signed union cards, he could no longer hire them on any of the Respondent's future jobs. Kimble also told two other foremen that the reason for a change in the Respondent's hiring procedure was to screen additional employees so that no more union members would be hired because an organizing drive was then underway. Since these remarks were made to other foremen and not to employees, they do not constitute a violation of Section 8(a)(1) of the Act. However, the record is undisputed that these remarks were in fact made and, as such, constitute evidence of animus on the part of the employer.

Just before Fontenot was fired, Sutton and Harrington told both him and Nunnery to be careful because either the Com-

pany or Exxon, or both, were trying to find safety infractions that they could use against them because of their union activities. While both warnings were designed to be helpful, they were also intimidating and constituted violations of Section 8(a)(1) of the Act. I reject Respondent's explanation that these supervisors were merely trying to enforce safety regulations. As of that moment Fontenot stood in no different shoes than any other member of his crew vis-a-vis safety infractions. He was being singled out for special treatment because of his union activities and his supervisors knew it. It is inconsistent for the Respondent to argue that these supervisors were trying to enforce management rules when they made the statements attributed to them but such statements were not coercive because these supervisors were also union members and were just trying to look out for their buddies.

C. *The Written Warning Given to Fontenot of a Safety Violation*

The warning which Fontenot received on March 25 for a ''safety violation,'' as well as the termination which he received the following day, have to be viewed and evaluated in light of the intense antiunion animus which characterized the Respondent's reaction to the news that its refinery job employees were being organized. Fontenot was one of the leaders of the organizing effort. He had caught the eye not only of the Respondent but of Exxon as well by his insistence that he be allowed to enter the Exxon control room to inspect the list of dangerous and contaminating substances present on the jobsite, a list which Exxon is required by law to keep. It is clear that Fontenot had incurred the displeasure of Exxon as well as that of his own employer by his union activities.

There can be no doubt that both Exxon and the Respondent were out to pin a safety violation on Fontenot. He was specifically warned that such an effort would take place and it did, within hours after one of the warnings had been given. To accomplish this task, Fontenot was placed on the job to work alone. Working solo on a job of this magnitude is something which rarely occurs, for reasons of safety as well as for any other considerations. On the morning of March 25, Nunnery, Fontenot's regular working partner, was sent from the catcracker to a vacant field and told to sit in his truck and wait. He did so for an entire morning and performed no work at all for a period of several hours, thereby leaving Fontenot alone on the sixth floor to be photographed while working without the possibility that someone else might also be pictured in the same photo and thus be subject to the same to the discipline.

Exxon transferred its regular photographer from his normal duties and assigned him to get a picture of Fontenot violating a safety rule. Reed's explicit request to Hargroder on the morning of March 25 was to stay with Fontenot long enough to get a shot of the latter working without his safety belt tied off. Hargroder watched Fontenot for about 25 minutes from two different locations. This was long enough to catch Fontenot in the act. When he accomplished his mission, Hargroder took his camera and left the area without either speaking to Fontenot or letting Fontenot know that he had been in the vicinity.

Other supervisors testified that it was standard practice to tell an employee immediately that he was in violation of a safety rule whenever a violation was observed. Fuller testified that it was important that on-the-spot warnings be given, especially in situations that involved nonuse of safety equipment at high levels, in order to prevent an accident from happening. Hargroder did not engage in such routine cautioning on the occasion in question, and he had no explanation for his failure to do so. It was clear from his behavior, as well as from the activities of others in supervision at Exxon and Harmony, that they were not interested in safety or accident prevention on this occasion but in making a case against Fontenot. The Respondent's motive has already been discussed. It is equally clear that Fontenot's union activities made him persona non grata in the eyes of Exxon as well as his own employer and that Exxon was working hand in glove with the Respondent to pin something on an employee who was agitating on the job. Since this motivation prompted their joint efforts from the outset, it is quite immaterial whether or not they actually caught Fontenot performing an unsafe act. Their efforts to catch him were tainted from the beginning and whatever followed from their illegal plan was also tainted, even though it might be perfectly justified under some other set of circumstances. By giving Dawson C. Fontenot a reprimand for a safety violation on March 25 in reprisal for his union activities, the Respondent violated Section 8(a)(1) and (3) of the Act.

D. *The Discharge of Dawson C. Fontenot*

On the day following the issuance of a written reprimand for a safety violation, Fontenot was discharged for what was also characterized in his termination slip as a ''safety violation.'' The safety violations in question were actually two confrontations with Mario Gonzales, the safety director for Sunbelt. Sunbelt was another maintenance contractor, and Gonzales, like all safety directors, had just been given authority over safety infractions committed by employees on the job other than just those who were employed by his own company.

Early in the morning shift, Fontenot had confronted Gonzales and Exxon's safety inspector, J. C. Ashford, to complain that Gonzales had been hassling ''my man.'' Gonzales asked him what he meant by ''his man'' and Fontenot identified him as the man with the union sticker on his hat. Gonzales attributed the disciplinary warning on that occasion to Ashford, stating the man in question had not been wearing earplugs and he should have been doing so. Fontenot demanded Gonzales' name and threatened to report Gonzales to his attorney. Gonzales gave him his name and sarcastically asked Fontenot if he did not also want his social security number. Gonzales admitted that he had lost his temper during this confrontation.

The event which triggered Fontenot's discharge came a few minutes later when Fontenot again confronted Gonzales and protested his action in harassing another union supporter for an asserted safety violation. FMC employee Bowles had tried to get on a crowded elevator and Gonzales stopped him. Like the employee involved in the earlier incident, Bowles was wearing a union sticker on his helmet. The details of this event need not be repeated; except to say that Fontenot was not engaged in telling another employee that he did not have to obey safety regulation. It is not significant whether Gonzales was right or wrong in his assertion that Bowles was guilty of a safety violation, although it is interesting to note that Bowles was not discharged as a result of this inci-

dent and that Gonzales was only mildly interested in what became of the Bowles' writeup. Fontenot was protesting to Gonzales an alleged effort on Gonzales' part to single out union supporters for enforcement of safety rules and discipline and Gonzales knew it. Gonzales admitted on the stand that Fontenot himself was not guilty of any safety infraction. Gonzales became angry at Fontenot for the second time within the space of half an hour because, in his view, Fontenot had challenged his authority as a safety director. As Gonzales put it:

> I don't know if I actually really ever told him [Storm] what to [do] with this man [Fontenot]. I mean it is almost a basic safety—I mean, a basic industry practice the safety officer needs the respect of the people. I mean, it really wasn't a question of what should be done. It was just how it should be done. In any line—contractor, any construction field—if you want to go heads up with the safety officer you are going to lose. Right or wrong you are going to lose to the safety officer. You must keep control of the job, because when you lose control of the job we have all types of problems and all types of incidents.

Fontenot had a right under the Act to protest to the safety officer that the latter was singling out union supporters for harassment for safety violations. It is immaterial whether the protest did or did not have merit. There is no credible evidence that Fontenot's conduct during the Bowles incident, short lived as it was, was so outrageous or defamatory that it should be removed from the normal ambit of statutory protection. With regard to language used during this incident, Gonzales observed, with reference to Bowles that, ''I mean, four letter—unfortunately, that is—it may not be the best thing, but it is definitely a construction trait—is profanity.'' Fontenot did not go that far.

The statement in Fontenot's termination slip to the effect that he was discharged for a safety violation is false. The Respondent is not at liberty to define safety violation so broadly that it infringes on statutory rights. The March 26 discharge was the final step in a process which the Respondent and Exxon had been implementing for a period of time in order to remove a union activist from the refinery jobsite. By discharging Fontenot because he had engaged in union activities, the Respondent violated Section 8(a)(1) and (3) of the Act. I so find and conclude.[9]

On the foregoing findings of fact and on the entire record herein considered as a whole, I make the following

CONCLUSIONS OF LAW

1. Respondent Harmony Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmith-Forgers and Helpers, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By placing a written warning in his personnel file in reprisal for his union activities and by discharging Dawson C. Fontenot because of his union activities, the Respondent herein violated Section 8(a)(3) of the Act.

4. By the acts and conduct set forth above in Conclusion of Law 3; by threatening to discharge employees and to refrain from rehiring them if they signed union cards; by telling employees that the Company was looking for pretexts to discipline and discharge them; and by coercively interrogating employees concerning their union activities, the Respondent violated Section 8(a)(1) of the Act.

5. The unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has committed certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purpose and policies of the Act.

Having found a continuing and adamant disposition on the part of this Respondent to violate the Act, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). I will recommend that the Respondent be required to remove from its personnel records the unlawful reprimands to Dawson C. Fontenot which it placed in its files, that it offer him full and immediate reinstatement to the same or substantially equivalent employment[10] and that he be made whole for any loss of pay or benefits which he may have suffered by reason of his discriminatory discharge, in accordance with the formula set forth in the *Woolworth* case,[11] with interest thereon at the adjusted prime rate used by the Internal Revenue Service for the computation of tax payments. *Olympic Medical Corp*., 250 NLRB 146 (1980); *Isis Plumbing Co*., 138 NLRB 716 (1962). I will also recommend that the Respondent post the usual notice advising employees of their rights and of the results in this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Harmony Corporation, Baton Rouge, Louisiana, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union membership and union activities.

[9] In pretrial motion, the Respondent moved to dismiss the consolidated complaint on the basis that it exceeded the scope of the unfair labor practice charges which had been filed. In an order dated December 15, 1988, the Associate Chief Administrative Law Judge in charge of the Atlanta office dismissed this motion. I adhere to his ruling.

[10] The fact that the Exxon refinery turnaround job may have been completed does not absolve the Respondent from its duty to offer reinstatement to Fontenot. Not only does the Respondent have a large complement of permanent employees in its maintenance crew at this jobsite but it also has other jobs in the Baton Rouge area on which it employs large numbers of employees. The record is quite clear that the Respondent has a practice of transferring employees from jobsite to jobsite. This practice should be followed in regard to Fontenot.

[11] *F. W. Woolworth Co*., 90 NLRB 289 (1950).

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Threatening to discharge employees or to refrain from rehiring them if they sign union cards.

(c) Telling employees that the Company is looking for pretexts to discipline and discharge them.

(d) Discouraging membership in or activities on behalf of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths-Forgers and Helpers, AFL–CIO, or any other labor organization by placing written reprimands in their personnel files, or by discharging, or otherwise discriminating against them in their hire or tenure.

(e) By any other means or in any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Dawson C. Fontenot full and immediate reinstatement to his former or substantially equivalent employment, without prejudice to his seniority or to any other rights he previously enjoyed, and make him whole for any loss of pay or other benefits which he may have suffered by reason of the discrimination found, in the manner described above in the remedy section of this decision.

(b) Remove from the personnel records of Dawson C. Fontenot the disciplinary warning and the termination slips which were placed there, refrain from using such documents as the basis for future disciplinary action, and notify Dawson C. Fontenot in writing of this action.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at each of Rsepondent's Baton Rouge, Louisiana area jobsites copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''